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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In the Matter of : B & H BATTERY, NORCO, CALIFORNIA N.L. INDUSTRIES, INC. 3000 North Belt East Houston, Texas 77032 and PETER J. GULL 24138 Millsap Drive Moreno Valley, California 92388, Respondents Proceeding under Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, (42 U.S.C. §9606)	Order No. 88-13

I. Jurisdiction

This Order is issued to N.L. Industries, Inc., and Mr. Peter J. Gull (Respondents) pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, by authority delegated to the Administrator of the United States Environmental Protection Agency (EPA), and redelegated to the EPA Regions. Notice of the issuance of this Order has previously been

given to the State of California.

The Director of the Toxics and Waste Management Division, EPA Region 9, has determined that there may be an imminent and substantial endangerment to the public health, welfare or the environment because of the release and threatened release of hazardous substances from the former B&H Battery facility at 901 N. First Street, Norco, California. Respondent N.L. Industries sent hazardous substances to the facility for treatment or disposal. Mr. Peter Gull is the apparent owner of the facility.

This Order directs Respondents, N.L. Industries and Mr. Peter Gull, to undertake actions to protect the public and the environment from this endangerment.

II. Findings of Fact

A. Background

1. The facility is a private residence at 904 N. First Street in the City of Norco, Riverside County, California.

2. The facility includes approximately four (4) acres of land and a house, which is now boarded up and vacant.

3. From 1961 until approximately 1983, Mr. Henry Grob operated a battery salvage, resale, and dismantling business at the facility, sometimes known as B&H Battery.

4. In his usual operation, Mr. Grob purchased small quantities of batteries from gas stations and individuals. Mr. Grob dismantled the batteries at the facility and sold the lead battery plates to local smelters, including the Morris P. Kirk & Son ("MPK") smelter at 2700 S. Indiana Street, Los Angeles, California (located in an area known as Vernon) ("Vernon smelter").

5. In 1972, Mr. Henry Grob entered a contract to dismantle batteries for MPK's Vernon smelter. Under this contract, MPK trucked loads of whole batteries to the facility for dismantling for a six week period. During this period, MPK applied approximately 1,100 batteries per day for dismantling at the Norco facility, totaling in excess of an estimated 100 tons of batteries.

6. N.L. Industries, Respondent, owned MPK, including the Vernon plant, at the time of the contract with Mr. Grob.

7. MPK delivered the batteries to the facility by dumping the batteries directly onto the ground. Because Mr. Grob did not have equipment capable of unloading the truckloads of batteries, MPK drivers unloaded the batteries by accelerating their trucks and then slamming on the brakes.

8. Because of the large volume of batteries trucked to the facility by MPK, the contract with MPK resulted in a significantly increased level of dismantling of batteries and attendant disposal of battery parts and contents at the facility. Mr. Grob dismantled the batteries by breaking open the tops of the batteries with an axe. Mr. Grob did not take any measures to contain the battery parts and contents, including polypropylene battery casings, strong acids, lead and lead sulfide, which were released onto the ground by this procedure.

9. No subsequent owners of the facility operated a battery dismantling operation at the facility.

10. The last known property owner is Mr. Peter J. Gull, Respondent. Mr. Gull purchased the facility on or about

December 1, 186. EPA notified Mr. Gull of his potential liability for the contamination on August 24, 1987.

11. Mr. Gull subsequently claimed that he sold the facility to a Mr. Martin Woods in 1987, without notifying Mr. Woods of the contamination problem. However, efforts to locate Mr. Woods have been unsuccessful. The only known addresses for Mr. Woods are the facility, which is boarded up and vacant, and the address on the Riverside County Tax Collector's Office record, which lists Mr. Woods care of Peter Gull at Mr. Gull's residence. The mortgage holder still shows Peter Gull as the owner of the property.

12. The EPA has designated an On-Scene Coordinator ("OSC") for the facility, pursuant to 40 C.F.R. Part 300.

B. Endangerment

1. The Riverside County Health Department conducted an investigation of the facility in 1987. Because soil sampling showed high levels of lead in the soil, the Health Department notified EPA of the results on May 15, 1987. EPA then initiated an extensive investigation into the nature, extent, and mobility of the contamination at the facility and adjacent properties (collectively referred to as "the site").

2. Contamination Levels. The surface soils of the site are contaminated with up to 80,000 parts per million (ppm) of lead and lead sulfide.[1] Eighty (80) percent of the site has surface soils which exceed 20,000 ppm of lead. Waste with a Total Threshold Limit Concentration of lead in excess of 1000 ppm of

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1. Levels given are for total lead in all forms.

lead is hazardous under Title 22, California Administrative Code, Section 66699(b).

3. Runoff. The former battery dismantling operation sits on a hill, with surface water drainage pathways in every direction away from the facility. Drainage culverts direct runoff onto neighboring properties.

4. Migration. Lead contamination has migrated in blowing soil and in surface water runoff a distance of approximately 200 feet off the southern edge of the facility, and approximately 300 feet off the northern edge of the facility.

5. Volume. The site contains an estimated 6000 tons of contaminated soil, debris, and battery casings. This is approximately 6000 cubic yards of soil.

6. Depth Extent. Contaminated soil has been detected at depths of up to 18 inches below the surface. Most of the contamination is confined to the upper six inches of soil.

7. Toxicology. Lead is toxic in all of its forms. According to Clinical Toxicology of Commercial Products, Fifth Edition, lead is one of the most hazardous of all the heavy metals. Lead exhibits a multitude of toxic effects on several bodily organs, and its toxic effects are cumulative. Lead tends to accumulate in the bones of humans, with a very long half-life. Chronic exposure to lead, and high-dose acute exposure, can produce widely varying plumbisms characterized by encephalopathy (swelling of the brain, accompanied by hyperemia and brain lesions, particularly in children), edema and hemorrhage, and muscular wasting or neuromuscular paralysis. Lead has been shown

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clearly to be a teratogen in laboratory animals, and is a suspected carcinogen.

8. Environmental Persistence. Lead is highly persistent in the environment and does not degrade into less toxic compounds. Lead is adsorbed to soil particles and blown by wind or transported by surface water runoff and deposited in areas away from its origin. Although lead does not usually migrate downward through soil to great depths, it can do so given significant rain water infiltration and hydrogeologic conditions.

9. Transport Pathways. Lead has moved from the site primarily by means of two contaminant pathways: surface water transport and windblown soil. Rainwater runoff pathways lead off the site in all directions because the site is on a hill. Drainage culverts channel surface water runoff, which picks up lead-contaminated soil, onto neighboring properties. Unless the contamination is remedied, the lead could migrate to a creek approximately a quarter mile south of the site. The area is also prone to hot, dry, and powerful "Santa Ana winds" in the summer which can blow soil from the site. In addition, off-road vehicles, which raise lead-contaminated dust, have been observed in the area.

10. Exposure Routes. The routes of primary lead exposure are through inhalation of windblown soil, direct dermal contact with soils or objects covered with dust, direct contact with surface water, and ingestion of soil or water by children.

11. Contaminant Receptors. There are neighbors directly bounding the facility on three sides. There are children in the

neighborhood. There is also a school about one quarter mile from the site. Any persons or wildlife in the zone of runoff from the site, along drainage culverts or in flat areas where rain water has evaporated, could potentially be exposed. Children in the area on off-road vehicles are also exposed to lead-laden dust raised by their vehicles.

12. Site Observations. The facility is largely devoid of vegetation, and most of the property contains stressed vegetation. Vegetation is also stressed off the facility along drainage pathways. The facility is visibly covered with thousands of pieces of broken battery casing.

III. Conclusions of Law

A. N.L. Industries, Inc., and Mr. Peter Gull are "persons" as defined in Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

B. The former site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

C. Lead and lead sulfide are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

D. The disposal of waste battery parts and contents on the soils of the site constitutes a "release" or "threatened release" of hazardous substances into the environment as defined in Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

E. N.L. Industries arranged for the disposal or treatment of the hazardous substances at the facility and transported the hazardous substances to the facility for disposal or treatment and is a liable party as provided in Section 107(a)(3)&(4) of CERCLA, 42 U.S.C. §9607(a)(3)&(4).

F. Mr. Peter Gull is the owner of the facility and is a liable party as provided in Section 107(a)(1) of CERCLA, 42 U.S.C. §9607(a)(1).

G. Respondents are jointly and severally liable for complying with the terms of this Order.

IV. Determinations

Based on the Findings of Fact and Conclusions of Law, the Director, Toxics and Waste Management Division, EPA Region 9, has made the following determinations:

A. The release and threatened release of hazardous substances and pollutants or contaminants from the site may present an imminent and substantial endangerment to the public health, welfare, or the environment.

B. In order to prevent or mitigate immediate and significant risk of harm to human health and the environment, an immediate removal action must be undertaken at the site.

C. The response measures required by this Order are consistent with the National Contingency Plan, 40 Code of Federal Regulations, Part 300, and are necessary to protect human health and the environment.

V. Order

Based upon the Findings of Fact, Conclusions of Law and Determinations, Respondents are hereby ordered and directed to implement the following measures:

A. Within fourteen (14) calendar days of the effective date of this Order, Respondents shall submit to EPA a written proposal explaining in reasonable detail the manner in which Respondents

will remove the threat to human health and the environment posed by the site.

B. Within thirty (30) calendar days of the effective date of this order, Respondents shall submit to EPA a final, written plan which shows all technical and administrative details of the planned response action. The planned action shall meet the following specifications:

1. Remedial action shall include treatment or removal of all lead-contaminated soil identified previously by EPA to be at the site, as well as all lead-contaminated soil which may be discovered in the future during the clean-up process.

2. Plan generation and work shall be performed by a certified environmental contractor.

3. The plan shall allow for a permanent reduction or elimination of the volume and mobility of lead contaminants at the site.

4. The plan shall also provide for lead soil sampling to verify that the soils immediately outside the boundary of remediation are free of lead, or that these soils contain lead at acceptable levels.

5. All soil which is removed or disturbed from properties neighboring the facility in the course of actions taken pursuant to this order shall be replaced by Respondents with clean soil fill to the level of the original grade.

C. Within seven (7) calendar days of EPA's approval of the proposal, Respondents shall begin implementation of the plan. All work shall be subject to the direction of EPA's On-Scene

Coordinator until the On-Scene Coordinator certifies that the work is complete. Respondents shall produce any further submittals required by the On-Scene Coordinator in relieving the threat to human health and the environment posed by the site.

D. Within sixty (60) calendar days of the commencement of work at the site, Respondents shall fully implement the proposal as approved by EPA, including verification sampling.

E. No activities may be undertaken at the site pursuant to this Order without the approval of EPA.

Respondents are further ordered as follows:

VI. Compliance With Other Laws

Respondents shall comply with all federal, state and local laws and regulations in carrying out the terms of this Order. All hazardous substances removed from the facility must be handled in accordance with the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6921, et seq., the California Hazardous Waste Control Law, California Health and Safety Code §25100, et seq., the regulations promulgated under these statutes and EPA's Off-site Disposal Policy.

VII. On-Scene Coordinator

EPA has appointed an On-Scene Coordinator (OSC) for the Site who has the authority vested in the On-Scene Coordinator by 40 C.F.R. Part 300. The On-Scene Coordinator for the site for the purposes of this Order is:

Mr. Richard Martyn
Mail Code T-4-9
United States Environmental Protection Agency
Region 9
215 Fremont Street
San Francisco, California 94105
(415) 974-7729

VIII. Submittals

All submittals and notifications to EPA required by this Order or the proposed plan for the site shall be made to:

Director, Toxics and Waste Management Division
United States Environmental Protection Agency
Region 9
215 Fremont Street
San Francisco, California 94105

Copies of all submittals and notifications shall also be sent to the On-Scene Coordinator.

All approvals and decisions of EPA made regarding the submittals and modifications shall be communicated to Respondents by the Director, Toxics and Waste Management Division, EPA Region 9, or his designee. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, or any other matter will relieve Respondents of their obligation to obtain formal approvals as required by this Order.

IX. Access

Respondents shall use their best efforts to obtain access to all properties upon which response actions must be implemented pursuant to this order. Respondents shall provide EPA employees and other representatives with complete access to the facility at all times. Nothing in this Order limits any access rights that EPA or other agencies may have pursuant to law.

X. Endangerment During Implementation

The Director, Toxics and Waste Management Division, EPA Region 9, may determine that acts or circumstances (whether related to or unrelated to this Order) may endanger human health, welfare or the environment and may order the Respondents to stop

further implementation of this Order until the endangerment is abated.

XI. Government Not Liable

The United States Government and its employees and other representatives shall not be liable for any injuries or damages to persons or property resulting from the acts or omissions of Respondents, their employees or other representatives caused by carrying out this Order.

For the purposes of this Order, the United States Government is not a party to any contract with the Respondents.

XII. Noncompliance

A. A willful violation or failure or refusal to comply with this Order may subject Respondents to a civil penalty of up to $25,000 per day in which the violation occurs or failure to comply continues, pursuant to the provisions of Section 106(b)(1) of CERCLA, 42 U.S.C. §9606(b)(1). Failure to comply with this Order without sufficient cause may also subject Respondents to punitive damages of up to three times the total costs incurred by the United States as a result of Respondents' failure to take proper action, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C.§ 9607(c)(3).

B. EPA may take over the removal action at any time if EPA determines that Respondents are not taking appropriate action. In the event EPA assumes responsibility for the removal action, Respondents shall be liable for all costs incurred by EPA to mitigate the site hazard. EPA may order additional actions it deems necessary to protect public health, welfare, or the en-

vironment.

XIII. Opportunity to Confer

Respondents may request a conference with the Director, Toxics and Waste Management Division, EPA Region 9, or his staff to discuss the provisions of this Order. At any conference held pursuant to Respondents' request, Respondents may appear in person or by counsel or other representatives for the purpose of presenting any objections, defenses or contentions which Respondents may have regarding this Order. If Respondents desire such a conference, Respondents must make a request orally within 24 hours of receipt of this Order, and confirm the request in writing.

XIV. Parties Bound

This Order shall apply to and is binding upon the Respondents, their officers, directors, agents, employees, contractors, successors; and assigns.

XV. Notice of Intent to Comply

Within 24 hours of receipt of this Order, Respondents shall orally inform EPA of their intent to comply with the terms of this Order. The oral notice shall be confirmed within two (2) days by written notice to the Director. Failure to timely notify EPA of the Respondents' intent to comply will be construed by EPA as a refusal to comply.

XVI. Notice to State

Notice of the issuance of this Order has been given to the State of California. EPA will consult with the California Department of Health Services, as appropriate, to ensure that the

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plans submitted by Respondents are consistent with State requirements.

XVII. Effective Date

Notwithstanding any conferences requested pursuant to the provisions of this Order, this Order is effective upon receipt, and all times for performance shall be calculated from that date.

IT IS SO ORDERED on this 22nd day of April, 1988.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

by: _____
Jeff Zelikson
Director, Toxics and Waste Management Division
EPA, Region 9

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In the Matter of : B & H BATTERY, NORCO, CALIFORNIA N.L. INDUSTRIES, INC. 3000 North Belt East Houston, Texas 77032 and PETER J. GULL 24138 Millsap Drive Moreno Valley, California 92388, Respondents Proceeding under Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, (42 U.S.C. §9606)	AMENDMENT TO Order No. 88-13

Amendment

A. Section V(B)(2) of Order No. 88-13 shall now read as follows: "Plan generation and work shall be performed by a professional engineer with demonstrable experience in hazardous waste cleanup. Use of this engineer by Respondents shall be subject to the approval of EPA's On-Scene Coordinator or other official designated by EPA."

B. Section V(B)(3) of Order No. 88-13 shall now read as follows: "The plan shall allow for either: a permanent reduction

or elimination of the volume of lead contaminants at the site; or a permanent reduction of the mobility of lead contaminants such that migration of lead contaminants is reduced to an acceptable level. The acceptable level of reduction in th potential for contaminant migration shall be determined by EPA's On-Scene Coordinator or other official designated by EPA."

C. Section V(C) of Order No. 88-13 shall now read as follows: "Within seven (7) calendar days of EPA's approval of the proposal, Respondents shall begin implementation of the plan. This date shall be called "the commencement date". All work shall be subject to the direction of EPA's On-Scene Coordinator until the On-Scene Coordinator certifies that the work is complete. Respondents shall produce any further submittals required by the On-Scene Coordinator in relieving the threat to human health and the environment posed by the site."

D. Section V(D) of Order No. 88-13 shall now read as follows: "The following schedule shall be met in implementing the plan. Any failure to meet these deadlines, or failure to act in the manner prescribed, may be deemed a violation of Order No. 88-13. EPA may take legal action on all violations as authorized by law.

1. Interim stabilization actions shall be performed, as defined in the plan, consisting of the following:

a. Excavation of off-site contaminated soils, stockpiling of such soils on-site, and replacing excavated soils with clean fill material,

b. Application of an acrylic sealant to contaminated on-

site areas, and

c. Repair of gates and provision for security at the site. These actions should begin on site at the commencement date, but shall begin no later than seven (7) days after the commencement date. These actions shall be completed within thirty (30) days of the commencement date. All actions shall be under the supervision of EPA's On-Scene Coordinator.

2. Within ninety-eight days (14 weeks), of the commencement date, Respondent shall have awarded a contract to perform the final remedy for the site. Within this time, Respondent shall provide EPA with a signed copy of such a contract.

3. Within one-hundred twelve days (16 weeks) of the commencement date, the actual solidification/fixation treatment shall begin. Also within this time, on-site soils will have been excavated and the cells for solidification will have been constructed. All work shall be under the supervision of EPA's On-Scene Coordinator.

4. Within one-hundred fifty-four days (22 weeks) of the commencement date, all solidification/fixation treatment shall be complete, and the solidified material shall be allowed to cure.

5. Within one-hundred ninety-six days (28 weeks), the plan shall be fully implemented, and all remedial work shall be completed, including verification sampling, site cap installation, grading, and revegetation.

6. If verification sampling shows new contamination not shown by the original EPA investigation, EPA may extend any or all of the deadlines herewithin at its discretion, by issuing a

written extension to the Respondent. No other communication shall imply that such an extension has been granted."

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ADMINISTRATIVE ORDER NO. 88-13 IS SO AMENDED on this 30th day of June, 1988.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

by: Laura F. Yoshii for

Jeff Zelikson
Director, Toxics and Waste Management Division
EPA, Region 9